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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/929,271	08/15/2001	Ricky K. C. Yeung	24753	8109

7590

09/29/2004

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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 09/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/929,271

Applicant(s)

YEUNG, RICKY K. C.

Examiner

Robert Madsen

Art Unit

1761

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 September 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 2 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached arguments.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: NONE.Claim(s) objected to: NONE.Claim(s) rejected: 1,3,5-11.Claim(s) withdrawn from consideration: NONE.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

***Response to Arguments***

1. Applicant's arguments filed September 14, 2004 have been fully considered but they are not persuasive.
2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on *combinations* of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).
3. Applicant states that LaGarde et al. does not teach a food backing mold, means for removing odor of peroxide cross linking agents by rinsing, or the recited cleaning steps. However, LaGarde et al. do suggest that the product may be used for contact with foodstuffs (Column 13, lines 3-9), and teach using peroxide cross-linking agents as well as a means for removing volatiles (i.e. heating), which would include any peroxide odors (Column 11, lines 43-45, Column 12, lines 28-32). LaGarde et al. merely differs from the pending in claims in (1) the specific *food* use of the material and (2) the rinsing and cleaning steps subsequent to forming the mold.
4. Applicant argues that Llorente Hompanera teaches away from applicant's claimed process and thus cannot be applied in combination with LaGarde et al. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, LaGarde et al. teach the material may be used for food contact and Llorente Hompanera teaches the same types of materials as LaGarde et al. are suitable for use as food molds, but must be (1) sterilized prior to use for about 5 hours (in a hot oven at a maximum temperature of 200°C) and (2) "purified" for 30 minutes following the sterilization step in order to comply with legislation (Column 4, lines 15-20). Thus, Llorente Hompanera provides guidance on not only teaches how to specifically treat the material of LaGarde et al. for food contact: a specific time and temperature required for sterilizing and time required for purifying, but also suggests a specific food contact use for such materials.

5. Applicant further argues that since White et al. forms a silicone rubber of a different number of materials and that White et al. do not teach food molds, there is no suggestion to combine the references. However, White et al. are merely relied on as teaching a conventional method for sterilizing silicone rubber (i.e. in boiling water).

6. Applicant states that Phipps et al. do not teach a food mold or removing *impurities* by ultrasonification, and teach a cavitable liquid for an ultrasonification process, which is not used by applicant. However, Phipps et al. teaching purifying *oriented* polymers material is preferably done by ultrasonification since it is a quicker alternative to conventional leaching/separation methods, which are purification methods. Furthermore, the claims do not exclude a cavitable liquid.

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7. Finally, applicant also notes that Osaka Titanium Co. does not teach food molds or specifically boiling water. However, Osaka Titanium Co is merely relied on as evidence to show that such a combination of boiling a solvent and ultrasonic treatment for removal of impurities.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.
9. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.
10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit 1761



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